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2. Code 1887, secs. 1032, 1033 (the latter section is amended by Acts 1893-94, p. 664, c. 599), conferring jurisdiction on justices of the peace in terms applies only to "towns," and is therefore not made to apply to the city of Buena Vista by the city's charter, sec. 49 (Acts 1893-94, pp. 113, 114, c. 114) of which declares that the justices of the peace therein shall exercise the same jurisdiction as is prescribed by the general laws of the state with reference to the justices of "cities and towns."

3. Where a city has been chartered as such by the legislature, its status as a city is not subject to collateral attack.

4. The Buena Vista city charter (Acts 1891-92, p. 366, c. 225, sec. 7) provides that the mayor shall possess all jurisdiction in criminal cases of justices of the peace of the city, who are declared to be conservators of the peace within the limits of the corporation, and sec. 49 (page 380), as amended by Acts 1893-94, pp. 113, 114, c. 114, declares that such justices shall have the same jurisdiction as is prescribed by the general laws of the state with reference to justices of "cities and towns." *Held*, that under Code 1887, sec. 4106, as amended by Acts 1899-1900, p. 838, c. 781, limiting the power of justices to try misdemeanors to such as occur within their jurisdiction, the mayor of such city had no jurisdiction to try a defendant for selling liquors in violation of Acts 1897-98, p. 401, c. 353, prohibiting such sale within two miles of the corporate limits of a city.

HOGE v. FIDELITY LOAN & TRUST CO.

Sept. 15, 1904.

[48 S. E. 494.]

ACTIONS—DEFENSES—ESTOPPEL IN PAIS—EQUITY—JURISDICTION—JUDGMENTS—INJUNCTION.

1. The defense of equitable estoppel is as available at law as in equity.

2. Where complainant had a defense of estoppel *in pais* to a debt sued on, but under advice neglected to make defense to the suit at law and permitted judgment to be recovered against her by default, she was not thereafter entitled to maintain a suit to enjoin the collection of such judgment on the ground of such estoppel, since, the jurisdiction of equity as to such defense being concurrent with the court of law, complainant waived her defense by failing to set up the same in the law action, that court having first acquired jurisdiction.

PRICE v. MARKS.

Sept. 15, 1904.

[48 S. E. 499.]

ASSUMPSIT—PLEADING VERIFIED ACCOUNT—AFFIDAVITS—UNVERIFIED PLEAS—JUDGMENT ON PLEADINGS—WAIVER—MISPRISION OF CLERK—TAKING DEPOSITIONS.

1. Code 1887, sec. 3286, provides that, where plaintiff in assumpsit files with the declaration an affidavit that the amount claimed is justly due and